

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
CONSERVATION LAW FOUNDATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 05-10487-NG
)	
MITT ROMNEY, in his Official Capacity as)	
GOVERNOR OF MASSACHUSETTS, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

**STATE DEFENDANTS’
PARTIAL MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(6), the State Defendants¹ move to dismiss Counts 1 and 5-12 of the plaintiff’s 20-count Complaint under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604, for failure to state a claim upon which relief can be granted. As grounds for their Motion, the State Defendants assert:

1. Counts 5 and 6 assert claims for alleged prospective violations of future deadlines that are still many years off. The Clean Air Act does not allow citizen suits for such purely “anticipatory” claims.

2. Counts 1 and 7-12 are based upon former requirements issued by the Massachusetts Department of Environmental Protection (“DEP”) that were not approved by the

¹ The State Defendants are the defendants Mitt Romney, in his official capacity as Governor of Massachusetts; Douglas I. Foy, in his official capacities as Secretary of the Office for Commonwealth Development and Chairman of the Commonwealth Development Coordinating Council; Daniel Grabauskas, in his official capacity as Secretary of the Executive Office of Transportation; John Cogliano, in his official capacity as Commissioner of the Massachusetts Highway Department; and Robert W. Golledge, in his official capacity as Commissioner of the Department of Environmental Protection.

Environmental Protection Agency, that did not become part of the Commonwealth's State Implementation Plan under the Clean Air Act, and that accordingly existed solely as a matter of state law. Those former DEP requirements have since been superseded by subsequent orders issued by the same state agency, acting pursuant to its lawful state-law authority, and they accordingly cannot provide the basis for a current Clean Air Act claim.

For further elaboration upon these grounds, the State Defendants respectfully refer the Court to State Defendants' Memorandum in Support of Partial Motion to Dismiss.

By their attorneys,

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Date: April 22, 2005

LOCAL RULE 7.1(A)(2) CERTIFICATION

I certify that I conferred with plaintiff's counsel on April 21, 2005 and that we attempted in good faith to resolve or narrow the issues presented in this Partial Motion to Dismiss.

/s/ Pierce O. Cray
Pierce O. Cray
Assistant Attorney General